**REMARKS**

The Information Disclosure Citation (PTO 1449) that accompanies the Official Action indicates that references EP 0 364 283 and EP 0 391 607 were not provided, and thus it appears that the Examiner did not consider these references.

These references were submitted as part of a prior filed application (10/068,869 filed February 11, 2002). Applicants claim priority to this application under 35 USC §120.

MPEP §609 III A.2 provides that "A copy of any patent, publication, pending U.S. application, or other information listed in an Information Disclosure Statement is not required to be provided if 1) the information was previously cited by or submitted to the Office in a prior application, provided that the prior application is properly identified in the IDS and is relied on from an earlier filing date under 35 USC §120."

Applicants have reviewed a copy of the application to which the present application claims priority. Copies of the references indicated in the present application as not being provided were provided in the parent application and were initialed as received by the Examiner. Accordingly, applicants respectfully request that the Examiner obtain a copy of the necessary references from the parent file and provide an indication that these references were considered as part of the

Information Disclosure Statement of the present application filed on November 6, 2003.

The specification has been amended to make editorial changes to place the application in condition for allowance at the time of the next Official Action.

Claims 1-8 were previously pending in the application. New claims 9-17 are added. Therefore, claims 1-17 are presented for consideration.

Claims 1-8 are rejected as unpatentable over GUPTA et al. 4,651,728 in view of HAMLIN 4,960,119. This rejection is respectfully traversed.

Claim 1 is amended and includes the steps of selectively supplying air enriched in oxygen to the passengers so that there is supplied to the passengers a first fraction of air enriched in oxygen from an independent source, during a phase of descent of the passenger aircraft between a cruising altitude and a re-routing altitude.

Both GUPTA et al. and HAMLIN are directed to continuously supplying oxygen to a pilot (and possibly a crew) of a military aircraft that flies at high altitudes. Column 11, lines 21-22 and 46-47 of GUPTA et al. disclose that the pilot wears an oxygen mask at all times so that air enriched in oxygen is continuously supplied to the pilots and not selectively supplied.

As disclosed at column 2, line 65 through column 3, line 2 and column 3, line 65-68 of HAMLIN, breathable gas is supplied continuously to the air crew members to a face mask 1 by the air crew member. HAMLIN does not teach or suggest selectively supplying air enriched in oxygen to the passenger, as recited in claim 1.

The above noted feature is missing from each of the references, is absent from the combination, and thus is not obvious to one having ordinary skill in the art.

Claim 1 also provides that a first fraction of air is supplied to the passengers during a phase of descent of the passenger aircraft between a cruising altitude and a re-routing altitude. Claim 1 further provides that second fraction of air, different from the first fraction, is supplied by an onboard separator at the re-routing altitude.

As seen in Figure 3 of GUPTA et al., the OBOGS (separator) is used at all times unless there is a problem with the OBOGS. If there is cabin depressurization and an OBOGS malfunction, then it appears that stand-by oxygen system 24 of GUPTA et al. is used. Then, when the aircraft is below 9000 feet, cabin air is used.

Accordingly, either stand-by supply 24 is used and then cabin air is used, or OBOGS is used at all times. It does not appear that GUPTA et al. teach using an independent air source

during a phase of descent of the aircraft between cruising altitude and a re-routing altitude and using an on-board separator to produce a second fraction of air enriched in oxygen which is delivered substantially at the re-routing altitude.

Claims 2-8 depend from claim 1 and further define the invention and are also believed patentable over the cited prior art.

New independent claim 9 also provides the step of selectively supplying air enriched in oxygen to the passengers. The analysis above regarding claim 1 is equally applicable to claim 9. Claims 10 and 11 depend from claim 9 and further define the invention and are also believed patentable over the cited prior art.

New independent claim 12 provides the step of providing each of the people on the aircraft with an oxygen mask, only when the aircraft is experiencing an emergency. As set forth above, both GUPTA et al. and HAMLIN continuously use an oxygen mask, even under normal flying conditions. Claims 13-20 depend from claim 12 and further define the invention and are also believed patentable over the cited prior art.

In addition, the dependent claims also include features not taught by the proposed combination of references. Specifically, claim 19 provides that a supply of the first fraction of air enriched in oxygen is stopped when the aircraft

reaches the re-routing altitude. GUPTA at column 11, lines 52-54 disclose that the stand-by oxygen system 24 is operated until the stand-by oxygen supply is depleted.

The position set forth in the Official Action is that it would be obvious to stop the supply of oxygen after reaching an altitude at which the passengers no longer need pure oxygen.

However, MPEP §2143(01) provides that if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).

GUPTA et al. at column 11, lines 50-55 specifically teach that standby oxygen system is used until the oxygen supply is depleted and after total stand-by oxygen depletion, the system selects OBOGS. Stopping the supply of pure oxygen after the aircraft reaches a specific altitude would not allow the stand-by oxygen to be totally depleted. Such proposed modification would change the principle of operation of GUPTA et al. and as such is insufficient to render the claim 19 *prima facie* obvious.

Accordingly, the new claims are believed to avoid the rejection under §103 and are allowable over the art of record.

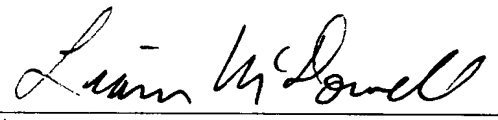
In view of the present amendment and the foregoing remarks, it is believed that the present application has been

placed in condition for allowance. Reconsideration and allowance are respectfully requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

YOUNG & THOMPSON



Liam McDowell, Reg. No. 44,231
745 South 23rd Street
Arlington, VA 22202
Telephone (703) 521-2297
Telefax (703) 685-0573
(703) 979-4709

LM/mjr
September 23, 2004